

Before the
Federal Communications Commission
Washington, D.C. 20554

APR 7 1998

In re)
)
JOSEPH FRANK PTAK)
San Marcos, Texas)
)
Order to Show Cause Why a)
Cease and Desist Order Should Not Be Issued)

CIB Docket No. 98-44

To: Richard L. Sippel
Administrative Law Judge

COMPLIANCE AND INFORMATION BUREAU'S
MOTION FOR SUMMARY DECISION

1. The Chief, Compliance and Information Bureau ("Bureau"), pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. § 1.251, hereby moves for summary decision on the issues specified. As demonstrated herein, there is no genuine issue of material fact for determination at hearing.

2. The *Order to Show Cause and Notice of Opportunity for Hearing*, FCC 98-60, released April 6, 1998 ("*Show Cause Order*"), commencing this proceeding specified two issues:

1. To determine whether Joseph Frank Ptak has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Joseph Frank Ptak should be ordered to cease and desist from violating Section 301 of the Act.

The *Show Cause Order* also provides that, without regard to the issuance of a cease and desist

027

order, it should also be determined whether Ptak should forfeit \$11,000 for violations of Section 301 of the Act.

3. The attached "Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents" ("admissions request") (attached hereto as Exhibit 1), related return receipt (attached hereto as Exhibit 2) and declarations (attached hereto as Exhibits 3 and 4)¹ reflect the following facts. Joseph Frank Ptak ("Ptak") is the owner of a residence located at 505 Patricia Drive, San Marcos, Texas. From March 26, 1997, to the present, Ptak, and/or one or more individuals under his direction or control, have operated an FM radio station at 505 Patricia Drive, San Marcos, Texas, known as "KIND." "KIND" transmits on 105.9 MHz, 24 hours per day, 7 days per week.

4. Ptak does not hold an authorization from this Commission to transmit radio energy on 105.9 MHz at San Marcos, Texas.² Notwithstanding the absence of any authorization from

¹ On May 8, 1998, the Bureau sent to Ptak, both by ordinary mail and by certified mail, return receipt requested, a copy of its admissions request (Exhibit 1). The certified mail receipt (Exhibit 2) reflects that Ptak received the Bureau's admissions request on May 12, 1998. Section 1.246(b) of the Commission's Rules, 47 C.F.R. § 1.246(b), provides that "[e]ach of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, . . . the party to whom the request is directed serves upon the party requesting the admission either [a response or an objection]. Thus, Ptak's responses or objections were due by May 22, 1998. As of May 28, 1998, the Bureau had not received anything from Ptak. Accordingly, because Ptak failed to file a response or objection by the due date therefor, each of the matters in the Bureau's admissions request should be deemed admitted.

In this regard, the corresponding channel for 105.9 MHz, Channel 290, is not allocated to San Marcos, Texas, but to Round Rock, Texas, a community located some 45 miles to the north, which is well within the minimum distance separations allowed by the Commission's Rules. See Sections 73.201, 73.202, 73.207(b)(1)(Table A) of the Commission's Rules, 47 C.F.R. §§ 73.201, 73.202, 73.207(b)(1)(Table A). See also, FCC 98M-33, released March 20, 1998 (attached hereto as Exhibit 5), which granted the application of August Communications

this Commission. Ptak has transmitted at a signal strength which has uniformly exceeded 250 microvolts/meter at 3 meters. Broadcasts that exceed 250 microvolts/meter at 3 meters require a license. Despite having received both oral and written warnings from agents of this Commission in April 1997 that his operation of a radio station on 105.9 MHz violated Section 301 of the Communications Act, Ptak has refused to stop operating the station.

5. Section 301 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 301, provides in pertinent part that no person shall operate any apparatus for the transmission of communications by radio from one place in any state to another place in the same state without a license from this Commission. The only pertinent exception to this blanket restriction for operation in the FM frequency band (88 MHz to 108 MHz) is found in Part 15 of the Commission's Rules, specifically, Section 15.239(b), 47 C.F.R. § 15.239(b), which provides that the field strength of such emissions shall not exceed 250 microvolts/meter at 3 meters.

6. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. *See New Broadcasting Corp.*, 44 FCC 2d 386 (Rev. Bd. 1973). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Therefore, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual

Group, as amended, to operate a new FM station on Channel 290C2 at Round Rock. (Official notice requested as to the distance between San Marcos and Round Rock.)

inferences that may be properly drawn from such facts." *Big Country Radio, Inc.*, 50 FCC 2d 967 (Rev. Bd. 1975). It is the Bureau's position that no genuine issues of any material fact remain.

7. Issue (1) seeks to determine whether Ptak has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act. As the foregoing demonstrates, Ptak has willfully and repeatedly transmitted radio energy within the State of Texas. He had and has no authorization to do so. Finally, the power used was in excess of that specified in Part 15 of the Commission's Rules. Accordingly, issue (1) should be resolved against Ptak.

8. Issue (2) seeks to determine whether Ptak should be ordered to cease and desist from violating Section 301 of the Act. The foregoing makes clear that Ptak has willfully and repeatedly violated Section 301, and there is no evidence which would mitigate the impact of these actions. Ptak and his companions have decided for themselves what radio transmissions they can make; however, the law is otherwise. He should be ordered to stop violating Section 301 of the Act. Accordingly, issue (2) should be resolved against Ptak.

9. Finally, a forfeiture is warranted. Ptak's violations of Section 301 of the Act have been willful and repeated. Those violations have occurred despite explicit and repeated warnings from agents of this Commission, and they have occurred for more than an entire year. Ptak is essentially daring this agency to stop him. His conduct is illegal, unacceptable and should not be condoned or excused in any manner. Considering Ptak's behavior in light of the pertinent factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D).

the Bureau submits that the maximum amount of forfeiture set by the Show Cause Order should be imposed. Accordingly, in addition to the cease and desist order, the Bureau requests that the presiding judge also impose a forfeiture of \$11,000 on Ptak.

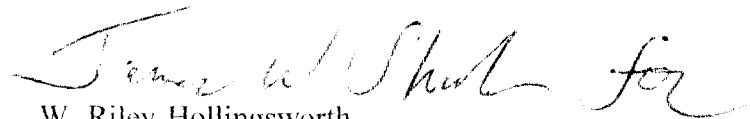
Respectfully submitted.
Richard Lee
Chief, Compliance and Information Bureau



Pamera D. Hairston
Chief, Compliance Division



James W. Shook



W. Riley Hollingsworth
Attorneys

Federal Communications Commission
2025 M Street, N.W., Suite 8210
Washington, D.C. 20554
(202) 418-1430

June 2, 1998

(Exhibits)

EXHIBIT 1
REQUEST FOR ADMISSIONS

RECEIVED

MAY - 8 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
JOSEPH FRANK PTAK) CIB Docket No. 98-44
San Marcos, Texas)
)
Order to Show Cause Why a)
Cease and Desist Order Should Not Be Issued)

To: Joseph Frank Ptak
505 Patricia Drive
San Marcos, Texas 78666

COMPLIANCE AND INFORMATION BUREAU'S
REQUEST FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS


The Chief, Compliance and Information Bureau ("CIB"), pursuant to Section 1.246 of the Commission's Rules, hereby requests that, within 10 days from receipt of this request, Joseph Frank Ptak ("Ptak") admit to the truth of facts and admit to the genuineness of documents, as set forth in the following numbered paragraphs. Each response should correspond and be identified with the same number listed in the Requested Admissions section below. The pleading containing the responses should be made under oath or affirmation by the person providing the response. In addition, Ptak is reminded that Section 1.246(b) of the rules provides that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder." A copy of the pleading submitted in response to the Requested Admissions is to be served upon the presiding officer as well as the attorneys representing the Chief, Compliance and Information Bureau in accordance with Sections 1.47 and 1.246 of the Commission's Rules (copies of both are attached).

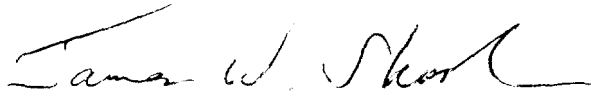
Requested Admissions

1. Ptak is the owner of a residence located at 505 Patricia Drive, San Marcos, Texas.
2. From March 26, 1997, to the present, Ptak, and/or one or more individuals under his direction or control, have operated a radio station at 505 Patricia Drive, San Marcos, Texas, known as "KIND."
3. From March 26, 1997, to the present, Ptak, and/or one or more individuals under his direction or control, have operated radio station "KIND" on behalf of the Hayes County Guardian newspaper.
4. From March 26, 1997, to the present, radio station "KIND" has transmitted its signal on 105.9 MHz.
5. From March 26, 1997, to the present, radio station "KIND's" signal strength uniformly has exceeded 250 microvolts/meter at 3 meters.
6. From March 26, 1997, to the present, radio station "KIND" has operated 24 hours per day, 7 days per week.
7. From March 26, 1997, to the present, neither Ptak nor anyone under his direction or control has held an authorization from the Federal Communications Commission ("FCC") to generate and emit radio frequency energy on 105.9 MHz at San Marcos, Texas.
8. On April 9, 1997, Ptak was orally advised by agents of the FCC that operation of radio station "KIND" violated federal law.
9. On April 9, 1997, agents of the FCC orally ordered Ptak to cease operations of radio station "KIND."
10. Ptak refused to obey the oral order referred to in Admission Request 9.
11. Ptak received a copy of the April 17, 1997, letter identified herein as Attachment A.

12. Ptak did not respond to Attachment A.

Respectfully submitted,
Richard Lee
Chief, Compliance and Information Bureau


Pamera D. Hairston
Chief, Compliance Division


James W. Shook


W. Riley Hollingsworth
Attorneys

Federal Communications Commission
2025 M Street, N.W., Suite 8210
Washington, D.C. 20554
(202) 418-1430

May 8, 1998

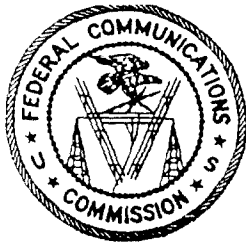
CERTIFICATE OF SERVICE

I, CurTrisha Banks, certify that I have, on this 8th day of May, 1998, sent by certified mail, return receipt requested, and by regular United States mail, a copy of the foregoing, "Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents" to:

Joseph Frank Ptak
505 Patricia Drive
San Marcos, Texas 78666

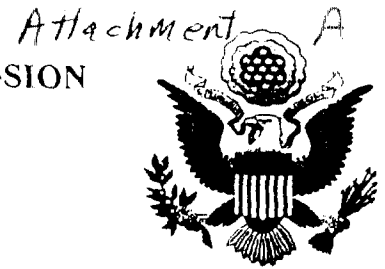
Administrative Law Judge Richard L. Sippel (first class mail only)
Federal Communications Commission
2000 L Street, N.W., Suite 218
Washington, D.C. 20554


CurTrisha Banks



FEDERAL COMMUNICATIONS COMMISSION

Houston Field Office
1225 North Loop West - Suite 900
Houston, Texas 77008



April 17, 1997

Joseph Frank Ptak
505 Patricia
San Marcos, Texas 78666

Certified Mail No. P554746641
Return Receipt Requested

RE: Case # HU-970407

SUBJ: WARNING FOR UNLICENSED OPERATION OF RADIO TRANSMITTING
EQUIPMENT

Mr. Ptak:

An investigation by this office has determined that on April 9, 1997, you operated radio transmitting equipment on the frequency 105.900 MHz. The transmissions emanated from your residence located at 505 Patricia, San Marcos, Texas. A search of Federal Communications Commission ("Commission") records confirms your admission that no valid license, issued by the Commission for this operation, exists. In view of these facts, please direct your attention to the provisions of the Communications Act of 1934, as amended ("Act"), and the Commission's Rules and Regulations ("Rules") governing the operation of radio transmitting equipment.

Operation of radio transmitting equipment, other than certain low powered devices operated in accordance with Part 15 of the Rules, may be operated only upon issuance by this Commission of a station license. Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. §301, and may subject the operator to substantial monetary fines, *in rem* forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. §§ 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. **Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately.**

This warning requires no reply. However, within thirty days of the date of this letter, you may submit any information relevant to this matter directed to the address in the letterhead above.

LOYD P. PERRY
Resident Agent, Houston Field Office

Commission may rule *ex parte* upon requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief, without waiting for filing of oppositions or replies.

Where specific provisions contained in this section conflict with this section, those provisions are controlling. See, in particular, §§ 1.394(c), 1.398(a), and 1.373.

[28 FR 12415, Nov. 22, 1963, as amended at 33 FR 6419, May 15, 1968; 45 FR 6419, Sept. 29, 1980; 51 FR 37682, July 26, 1986; 54 FR 37682, Sept. 12, 1989]

Motions for extension of time.

It is the policy of the Commission that extensions of time shall not be readily granted.

Motions for extension of time in order to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other papers in rulemaking proceedings conducted under part C of this part shall be filed at least 7 days before the filing date. If a motion is denied, the responses, comments, replies thereto, or other papers need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a motion for a brief extension of time related to the duration of the proceeding and will consider motions for acceptance of comments, reply comments or other papers filed after the filing date.

If a motion for extension of time is granted, the papers in proceedings conducted under notice and comment rulemaking proceedings is filed less than 7 days prior to the day for filing the papers, the party filing the motion shall, in addition to serving the motion on the parties, orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

[43 FR 1, Dec. 1, 1978, as amended at 41 FR 40, Mar. 5, 1976; 41 FR 14871, Apr. 8, 1976; 49 FR 10887, June 3, 1984]

§ 1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section.

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed: *Provided, however*, That formal complaints filed under section 208 of the Communications Act will be served by the Commission.

(c) Commission counsel who formally participate in any proceeding shall be served in the same manner as other persons who participate in that proceeding. The filing of a document with the Commission does not constitute service upon Commission counsel.

(d) Documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. When a party is represented by an attorney of record in a formal proceeding, service shall be made upon such attorney.

(e) Delivery of a copy pursuant to this section means handing it to the party, his attorney, or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(f) Service by mail is complete upon mailing.

(g) Proof of service, as provided in this section, shall be filed before action is taken. The proof of service shall show the time and manner of service, and may be by written acknowledgment of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission. Failure to make proof of service

will not affect the validity of the service. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to a party.

[28 FR 12415, Nov. 22, 1963, as amended at 40 FR 55644, Dec. 1, 1975; 53 FR 11852, Apr. 11, 1988]

§ 1.48 Length of pleadings.

(a) Affidavits, statements, tables of contents and summaries of filings, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading. If other materials are submitted with a pleading, they will be counted in determining its length; and if the length of the pleadings, as so computed, is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration.

(b) It is the policy of the Commission that requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted. Where the filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the period is more than 10 days, the request shall be filed at least 10 days before the filing date. (See § 1.4.) If a timely request is made, the pleading need not be filed earlier than 2 business days after the Commission acts upon the request.

[41 FR 14871, Apr. 8, 1976, and 49 FR 40169, Oct. 15, 1984]

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed on A4 (21 cm. × 29.7 cm.) or on 8½ × 11 inch (21.5 cm. × 27.9 cm.) paper with the margins set so that the printed material does not exceed 6½ × 9½ inches (16.5 cm. × 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 1/6") in height. The body of the text must be double spaced with a minimum distance of 1/8 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single

of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown, additional time is necessary.

(2) The presiding officer may file a response to the affidavit, and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

(5 U.S.C. 556)

[39 FR 12425, Nov. 22, 1963, as amended at 55 FR 26641, Sept. 4, 1990; 62 FR 4171, Jan. 29, 1997]

PREHEARING PROCEDURES

§ 1.246 Admission of facts and genuineness of documents.

(a) Within 20 days after the time for filing a notice of appearance has expired; or within 20 days after the release of an order adding parties to the proceeding (see §§ 1.223 and 1.227) or changing the issues (see § 1.229); or within such shorter or longer time as the presiding officer may allow on motion or notice, a party may serve upon any other party a written request for the admission by the latter of the

genuineness of any relevant documents identified in and exhibited by a clear copy with the request or of the truth of any relevant matters of fact set forth in the request.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves upon the party requesting the admission either: (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(c) A copy of the request and of any answer shall be served by the party filing on all other parties to the proceeding and upon the presiding officer.

(d) Written objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.

[39 FR 161, Jan. 12, 1968, as amended at 35 FR 17333, Nov. 11, 1970]

§ 1.248 Prehearing conferences; hearing conferences.

(a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall

EXHIBIT 2
COPY OF CERTIFIED MAIL RECEIPT

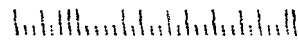
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Jim Shook - 1800C1
2025 M St NW Rm 8210
Washington DC 20554



Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Joseph P. HAK
505 Patricia Drive
San Marcos TX 78666

4a. Article Number

P3606603 103

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☒ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X Joe P. HAK

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

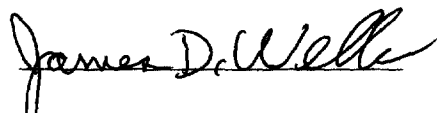
Thank you for using Return Receipt Service.

EXHIBIT 3
WELLS DECLARATION

Declaration Under Penalty of Perjury

1. My name is James D. Wells.
2. I am an employee of the Federal Communications Commission ("FCC"). I am the District Director of the FCC's Compliance and Information Bureau ("CIB") Dallas, Texas, District office. I am making this declaration in support of a CIB motion for summary decision with respect to an order to show cause directed against Joseph Frank Ptak.
3. In conjunction with the preparation of an "Investigative Case Report" concerning Joseph Frank Ptak, I made and signed a document styled "Statement of Investigating Agent James D. Wells" ("Statement"), which is attached hereto and identified as Attachment A.
4. I hereby declare under penalty of perjury under the laws of the United States of America that all statements of fact in my Statement are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 22, 1998.

A handwritten signature in black ink that reads "James D. Wells". The signature is written in a cursive, flowing style.

James D. Wells
District Director
Dallas District Office
Compliance and Information Bureau

Attachment A (Wells)

STATEMENT OF INVESTIGATING AGENT JAMES D. WELLS

James D. Wells, District Director, FCC CIB Dallas.

I am currently employed by the Federal Communications Commission and have been so employed since August 4, 1969. I hold the position of District Director of the Dallas, Texas Field Office, and have held that position since April, 1978. I hold a Bachelor of Science Degree in Electrical Engineering from Lamar University.

My duties include the monitoring, direction finding, and inspection of all radio stations in the United States. This includes the use of sophisticated mobile automatic direction finding (MADF) equipment capable of pinpointing the source of radio transmissions. My use of this equipment enables me to locate the source of a transmission by making directional bearings on the signal and measuring the strength of the signal. I have utilized this direction finding equipment and associated methods to locate sources of radio transmissions more than one thousand times without error.

All radio transmitting equipment, other than certain low powered devices operated in accordance with 47 C.F.R. Part 15, must be licensed by the Commission before operation. The operation of any radio equipment for which a license is required that allows radio frequency energy to be transmitted from one place in any state, territory, or possession of the United States to another place in the same state, territory, or possession, without such a license granted for the operation is in violation of 47 U.S.C. § 301.

On April 9, 1997, I and Houston Resident Agent Loyd P. Perry drove to San Marcos, Texas in MADF unit FC-660. A broadcast signal on 105.9 MHz was monitored approximately 10 miles south of San Marcos, increasing in strength as the MADF unit approached San Marcos. I observed agent Perry perform routine calibration of the MADF unit using both internal and external signal sources. At 1514 hours (local time), using the MADF, the source of the signal was positively identified to be a vertical dipole antenna mounted on a tower on the rear of the residence at 505 Patricia, San Marcos, Texas. At 1518 hours, the broadcast identified itself as "KIND". In my judgement, because the radio station utilized an external antenna over twenty feet in height, and the signal could be received over 10 miles away, the radio transmitting equipment clearly exceeded the low power limits of 47 C.F.R. Part 15. And because there was no record of a license issued for operation of the equipment, the observed operation was unlicensed, in violation of 47 U.S.C. § 301. An audio tape recording was made continuously during the direction-finding.

At 1529 hours, agent Perry and I, accompanied by San Marcos Police Officer Royce Smith, drove to the front of the residence at 505 Patricia. Numerous persons were present in the front yard of the residence. Agent Perry and I identified ourselves to an adult male and asked to speak to the owner of the station. An adult male exited the house and identified himself as JOSEPH PTAK, owner of the house. PTAK produced Texas drivers license number 05800141 confirming his identity and residence, and DOB of 3/19/58. Also present during the inspection was Joel Dean Simpson, 109 Spring Road, San Marcos, Texas 78666, DOB 9/24/53, TDL 12558038. Additionally, a reporter and cameraman from an Austin television station were present and filmed the entire inspection. Upon Perry's request, PTAK allowed inspection of the station. PTAK led agent Perry and I to a bedroom containing the transmitter with a cable exiting a rear exterior window. This cable fed a vertical dipole antenna mounted on a 25-30 foot high tower at the rear of the house. An unconnected wattmeter was located next to the transmitter. PTAK stated that the transmitter power was 30 watts. Use of such power and external antenna clearly exceeds the low power limits of 47 C.F.R. Part 15. PTAK stated there was no license for the station, that operation began March 26, 1997, and has continued 24 hours a day. PTAK stated the station was run by the Hayes County Guardian newspaper and staffed with volunteers. At 1550 hours, Perry verbally advised PTAK that the station was in violation of federal law and ordered PTAK to discontinue operation. PTAK refused. PTAK referred us to his legal counsel, J. Patrick Wiseman of Houston 713-526-1778. At 1558 hours, agent Perry and I left the residence.

At 1600 hours, agent Perry and I again positively identified the source of the signal that continued to operate at 505 Patricia, San Marcos. In my judgement, because the radio station utilized an external antenna over twenty feet in height, and the signal could be received over 10 miles away, the radio transmitting equipment clearly exceeded the low power limits of 47 C.F.R. Part 15. And because there was no record of a license issued for operation of the equipment, the observed operation was unlicensed, in violation of 47 U.S.C. § 301.

On May 5, 1997, the Dallas Field Office received a written complaint from the Texas Association of Broadcasters complaining of the unlicensed station on 105.9 MHz in San Marcos.

In summary, considering the above cited information, I believe that JOSEPH FRANK PTAK did knowingly and willfully operate unlicensed radio equipment in violation of 47 U.S.C. § 301.

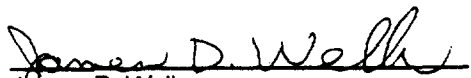

James D. Wells,
District Director, Dallas Field Office, FCC

EXHIBIT 4
PERRY DECLARATION

Declaration Under Penalty of Perjury

1. My name is Loyd P. Perry.

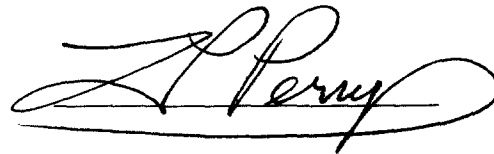
2. I am an employee of the Federal Communications Commission ("FCC"). I am one of the Resident Agents of the FCC's Compliance and Information Bureau ("CIB") located in Houston, Texas. I am making this declaration in support of a CIB motion for summary decision with respect to an order to show cause directed against Joseph Frank Ptak.

3. In conjunction with the preparation of an "Investigative Case Report" concerning Joseph Frank Ptak, I made and signed a document styled "Statement of Investigating Agent Loyd P. Perry" ("Statement"), which is attached hereto and identified as Attachment A. In my Statement, I refer to an "Unlicensed Warning Letter" ("Letter"), which I signed and sent to Ptak on April 17, 1997. That Letter is attached hereto and identified as Attachment B. Receipt thereof by Joe D. Simpson, an associate of Ptak, is evidenced by a photocopy of the return receipt card, which is attached hereto and identified as Attachment C. To the best of my knowledge, by letter dated June 9, 1997, Magalie R. Salas, then Chief, Compliance Division, CIB, responded to a letter dated March 18, 1997, from Joseph F. Ptak, Joel Dean Simpson and Jeffrey "Zeal" Stefanoff. The Salas letter is attached hereto and identified as Attachment D, while the letter from Ptak, Simpson and Stefanoff is attached hereto and identified as Attachment E. Both my April 17, 1997, letter and the Salas June 9, 1997, letter, inform Ptak, either directly or through his attorney, that his unlicensed operation of radio transmitting equipment on 105.9 MHz in San Marcos violates Section 301 of the Communications Act of 1934, as amended.

4. I hereby declare under penalty of perjury under the laws of the United States of America that all statements of fact in my Statement are true and correct.

5. On January 14, 1998, using direction finding techniques similar to those described in my Statement, I determined that radio transmissions were occurring on 105.9 MHz from Ptak's residence in San Marcos, Texas. To the best of my knowledge, on March 20, 1998, Oliver K. Long, a FCC CIB Resident Agent located in Houston, Texas, using direction finding techniques similar to those described in my Statement, determined that radio transmissions were occurring on 105.9 MHz from Ptak's residence in San Marcos, Texas. These radio transmissions exceeded the power levels for unlicensed operation as allowed by Part 15 of the Commission's Rules. A search of the the Commission's broadcast application records indicate that no license has been issued to Ptak to broadcast on that frequency at that power level in San Marcos, Texas. The statement of record is attached hereto and identified as Attachment F.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 28, 1998.

A handwritten signature in dark ink, appearing to read "L. P. Perry", with a large, sweeping flourish at the end.

Loyd P. Perry
Resident Agent
Compliance and Information Bureau
Houston, Texas

Attachment A (Perry)

STATEMENT OF INVESTIGATING AGENT LOYD P. PERRY

Loyd P. Perry, Resident Agent, FCC, CIB, Houston.

I am currently employed by the Federal Communications Commission and have been so employed since January, 1979. I hold the position of Resident Agent at Houston, Texas, and have held that position since July, 1996. I hold a Bachelor of Science Degree in Electrical Engineering from the University of Texas at Austin, and a Doctor of Jurisprudence Degree from South Texas College of Law.

My duties as Resident Agent include the monitoring, direction finding, and inspection of radio transmitting apparatus in the United States. This includes the use of sophisticated mobile automatic direction finding (MADF) equipment capable of pinpointing the source of radio transmissions. My use of this equipment enables me to locate the source of a transmission by making directional bearings on the signal and measuring the strength of the signal. I have utilized this direction finding equipment and associated methods to locate sources of radio transmissions more than one thousand times without error.

All radio transmitting equipment, other than certain low powered devices operated in accordance with 47 C.F.R. Part 15, must be licensed by the Commission before operation. Operation of radio equipment for which a license is required that allows radio frequency energy to be transmitted from one place in any state, territory, or possession of the United States to another place in the same state, territory, or possession, without such a license granted for the operation is in violation of 47 U.S.C. §301.

On April 6, 1997, I observed an article in the Houston Chronicle Sunday edition concerning the operation of radio station KIND on 105.9 MHz in San Marcos, Texas. The reporter's interviews with the operators of the station, identified as JOSEPH PTAK, Joe Simpson and Jeffrey Stefanoff, indicated that the station had no FCC license. The article stated that the operators learned about "pirate" radio broadcasting through discussions with Stephen Dunnifer. A check of FCC license records revealed no record of a license for that frequency in the vicinity of San Marcos, Texas.

On April 9, 1997, I received a telephone complaint (via the National Call Center) from the San Marcos Police Department regarding operation of an unlicensed FM radio station on 105.9 MHz. The complaint alleged that the station broadcast profane language.

Still on April 9, 1997, I and Dallas Field Office Director James D. Wells drove to San Marcos, Texas in MADF unit FC-660. A broadcast signal on 105.9 MHz was monitored approximately 10 miles south of San Marcos, increasing in strength as the MADF unit approached San Marcos. In San Marcos, I spoke with Sgt. Byron Mobley of the San Marcos PD. Mobley identified the operators of the station as JOSEPH PTAK (also owner of the residence at 505 Patricia), Joe Simpson, and Jeff Stefanoff. Mobley stated that the subjects were long-time well-known activists in the community, published a local newspaper, and were behind a local initiative to legalize marijuana use. The same people had participated in a recent protest in which they openly smoked marijuana in the lobby of the police station, resulting in their arrest.

Still on April 9, 1997, agent Wells and I proceeded to monitor the broadcast signal on 105.9 MHz. I calibrated the MADF unit using both internal and external signal sources. At 1514 hours (local time), using the MADF, the source of the signal was positively identified to be a vertical dipole antenna mounted on a tower on the rear of the residence at 505 Patricia, San Marcos, Texas. At 1518 hours, the broadcast identified itself as "KIND". In my judgement, because the radio station utilized an external antenna over twenty feet in height, and the signal could be received over 10 miles away, the radio transmitting equipment clearly exceeded the low power limits of 47 C.F.R. Part 15. And because there was no record of a license issued for operation of the equipment, the observed operation was

unlicensed, in violation of 47 U.S.C. § 301. An audio tape recording was made continuously during the direction-finding.

At 1529 hours, agent Wells and I, accompanied by San Marcos Police Officer Royce Smith, drove to the front of the residence at 505 Patricia. Numerous persons were present in the front yard of the residence. Agent Wells and I identified ourselves to an adult male and asked to speak to the owner of the station. An adult male exited the house and identified himself as JOSEPH PTAK, owner of the house. PTAK produced Texas drivers license number 05800141 confirming his identity and residence, and DOB of 3/19/58. Also present during the inspection was Joel Dean Simpson, 109 Spring Road, San Marcos, Texas 78666, DOB 9/24/53, TDL 12558038. Additionally, a reporter and cameraman from an Austin television station were present and filmed the entire inspection. Upon my request, PTAK allowed inspection of the station. PTAK led agent Wells and I to a bedroom containing the transmitter with a cable exiting a rear exterior window. This cable fed a vertical dipole antenna mounted on a 25-30 foot high tower at the rear of the house. An unconnected wattmeter was located next to the transmitter. PTAK stated that the transmitter power was 30 watts. Use of such power and an external antenna clearly exceeds the low power limits of 47 C.F.R. Part 15. PTAK stated there was no license for the station, that operation began March 26, 1997, and has continued 24 hours a day since then. PTAK stated the station was run by the Hayes County Guardian newspaper and staffed with volunteers. At 1550 hours, I verbally advised PTAK that his operation of the station was in violation of federal law and ordered PTAK to discontinue operation. PTAK refused. PTAK referred us to his legal counsel, J. Patrick Wiseman of Houston 713-526-1778. At 1558 hours, agent Wells and I left the residence.

At 1600 hours, agent Wells and I again positively identified the source of the signal which continued to operate at 505 Patricia, San Marcos. In my judgement, because the radio station utilized an external antenna over twenty feet in height, and the signal could be received over 10 miles away, the radio transmitting equipment clearly exceeded the low power limits of 47 C.F.R. Part 15. And because there was no record of a license issued for operation of the equipment, the observed operation was unlicensed, in violation of 47 U.S.C. § 301.

On April 12, 1997, I observed another article about the station in the Houston Chronicle. The article attributed to PTAK the statement that "the station will stop operating only if ordered to do so in federal court".

On April 17, 1997, I issued an Unlicensed Warning Letter to the subject JOSEPH FRANK PTAK via certified U.S. mail, return receipt requested. The letter cited violation of Section 301 of the Communications Act of 1934, as amended (47 U.S.C. §301), as a result of the operation on April 9, 1997. Receipt of the warning letter was evidenced by a signed return receipt.

On April 23, 1997, I received a fax, via the Dallas Field Office, from the City of San Marcos assistant city attorney requesting status of the case. The City has filed a complaint against PTAK for operating a non-permitted business in a residentially zoned area.

On May 5, 1997, the Dallas Field Office received a written complaint from the Texas Association of Broadcasters complaining of the unlicensed station on 105.9 MHz in San Marcos.

On May 13, 1997, I received a faxed complaint from San Marcos PD Officer Terry Nichols. The complaint detailed observations by Nichols and another officer of alleged vulgar language broadcast by KIND, and requested action by the FCC.

On June 9, 1997, the Chief Compliance Division, CIB, responded to a March 18, 1997, letter from PTAK, Simpson, and Stefanoff under letterhead of the Hays County Guardian, received in the FCC's Gettysburg Office on April 3, 1997. The letter admitted the unlicensed operation on 105.9 MHz in San Marcos, Texas, and requested a waiver of FCC rules to allow such operation. The response from Chief, Compliance Division to PTAK's legal counsel, J. Patrick Wiseman, again warned that the station's operation was in violation of 47 U.S.C. § 301 and that PTAK should be advised to refrain from continued unlicensed operation. The response also denied the waiver request as being insufficient.